BOARD BILL # 73 **INTRODUCED BY ALDERWOMAN YOUNG**

AN ORDINANCE RECOMMENDED BY THE BOARD OF ESTIMATE AND APPORTIONMENT AUTHORIZING THE CITY OF ST. LOUIS, MISSOURI TO ENTER INTO A DEVELOPMENT AGREEMENT WITH PEABODY INVESTMENTS CORP.; AUTHORIZING THE CITY TO ISSUE ITS TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS (PEABODY ENERGY CORPORATION PROJECT), SERIES 2010, IN A PRINCIPAL AMOUNT NOT TO EXCEED $50,000,000 FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COSTS OF ACQUIRING CERTAIN EQUIPMENT FOR AN INDUSTRIAL DEVELOPMENT PROJECT IN THE CITY; APPROVING A PLAN FOR SUCH PROJECT; AUTHORIZING AND DIRECTING THE MAYOR AND THE COMPTROLLER TO EXECUTE CERTAIN DOCUMENTS RELATED THERETO; AUTHORIZING AND DIRECTING THE MAYOR AND THE COMPTROLLER TO ENTER INTO ONE OR MORE LEASES WITH RESPECT TO CERTAIN REAL PROPERTY PERTAINING TO SUCH PROJECT; AND AUTHORIZING AND DIRECTING THE TAKING OF OTHER ACTIONS AND APPROVAL AND EXECUTION OF OTHER DOCUMENTS AS NECESSARY OR DESIRABLE TO CARRY OUT AND COMPLY WITH THE INTENT HEREOF.

WHEREAS, the City of St. Louis, Missouri, a constitutional charter city and political subdivision of the State of Missouri (the "City"), is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended, and its charter (collectively, the "Act"), to purchase, construct, extend, equip and improve certain projects (as

defined in the Act) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, office industry, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable; and

WHEREAS, the Act requires the City to prepare a plan in connection with any industrial development project undertaken pursuant to the Act; and

WHEREAS, a Plan for an Industrial Development Project (the "Plan") has been prepared in the form of Exhibit A attached hereto; and

WHEREAS, notice of the City's consideration of the Plan has been given in the manner required by the Act, and the Board of Aldermen has fairly and duly considered all comments submitted to the Board of Aldermen regarding the proposed Plan; and

WHEREAS, the Board of Aldermen hereby finds and determines that it is desirable for the improvement of the economic welfare and development of the City and within the public purposes of the Act that the City: (1) approve the Plan pursuant to the Act, (2) issue its Taxable Industrial Development Revenue Bonds (Peabody Energy Corporation Project), Series 2010, in a principal amount not to exceed $50,000,000 (the "Bonds"), for the purpose of acquiring certain personal property (the "Project Equipment") to be used for office industry purposes at facilities located at 701 Market Street and 900 Walnut Street in the City, and (3) enter into a Development Agreement with Peabody Investments Corp., a Delaware corporation (the "Company") and affiliate of Peabody Energy Corporation, a Delaware corporation, in similar form to that attached hereto as Exhibit B (the "Development Agreement"); and

WHEREAS, simultaneously with the issuance of the Bonds, the City will (1) lease the

Project Equipment to the Company and (2) enter into a Performance Agreement (the "Performance Agreement") with the Company under which the Company will undertake certain obligations to the City in consideration of the City issuing the Bonds; and

WHEREAS, the Board of Aldermen hereby finds and determines that it is desirable for the improvement of the economic welfare and development of the City and within the public purposes of the Act that the City: (1) lease certain real property from the Company as contemplated in the Development Agreement, and (2) improve such real property and enter into one or more subleases for such real property with the Company for its use for office industry purposes as provided in the Development Agreement; and

WHEREAS, the Board of Aldermen further finds and determines that it is necessary and desirable in connection with the issuance of the Bonds that the City enter into certain documents, and that the City take certain other actions and approve the execution of certain other documents as herein provided;

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The Board of Aldermen hereby approves the Plan for an Industrial Development Project attached as Exhibit A hereto.

SECTION TWO. The City is hereby authorized to provide for the acquisition of the Project Equipment, in the manner and as more particularly described in the Indenture and the Lease Agreement hereinafter authorized.

SECTION THREE. The City is hereby authorized to issue and sell the Bonds as described in the recitals hereto for the purpose of providing funds to pay the costs of the Project Equipment. The Bonds shall be issued and secured pursuant to the Indenture described below and shall have such terms, provisions, covenants and agreements as are set forth in the Indenture.

SECTION FOUR. The Bonds and the interest thereon shall be limited obligations of the City, payable solely out of certain payments, revenues and receipts derived by the City from the Lease Agreement described below. Such payments, revenues and receipts shall be pledged and assigned to U.S. Bank National Association, St. Louis, Missouri (the "Trustee"), as security for the payment of the Bonds as provided in the Indenture. The Bonds and the interest thereon shall not constitute general obligations of the City, the State of Missouri (the "State") or any political subdivision thereof, and neither the City nor the State shall be liable thereon. The Bonds shall not constitute an indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction, and are not payable in any manner by taxation.

SECTION FIVE. The Board of Aldermen hereby finds and determines that it is desirable for the improvement of the economic well-being and industrial development of the City and within the public purposes of the Act that the City lease certain real property from the Company as provided in the Development Agreement and enter into one or more subleases for such real property with the Company for its use for office industry purposes. The Board of Aldermen also finds and determines that the improvement of such real property will serve the economic welfare and development of the City and the public purposes specified in the Act, and authorizes the City to contract with the Company for the improvement and lease of such property.

SECTION SIX. The Board of Aldermen hereby approves the following documents (collectively, the "City Documents"), in substantially the forms presented to the Board of Aldermen and attached to this Ordinance:

(a) Development Agreement between the City and the Company attached hereto as Exhibit B;

(b) Trust Indenture (the "Indenture") between the City and the Trustee attached hereto as Exhibit C, pursuant to which the Bonds will be issued and the City will pledge the Project Equipment and assign certain of the payments, revenues and receipts received pursuant to the Lease Agreement to the Trustee for the benefit and security of the owners of the Bonds upon the terms and conditions as set forth in the Indenture;

(c) Equipment Lease (the "Equipment Lease") between the City and the Company attached hereto as Exhibit D, under which the City will lease the Project Equipment to the Company pursuant to the terms and conditions therein, in consideration of rental payments by the Company that will be sufficient to pay the principal of and interest on the Bonds;

(d) Bond Purchase Agreement between the City and the Company attached hereto as Exhibit E;

(e) Performance Agreement between the City and the Company attached hereto as Exhibit F;

(f) Property Lease between the City and the Company attached hereto as Exhibit G to the Development Agreement (the "Property Lease").

(g) Sublease between the City and the Company attached hereto as Exhibit H to the Development Agreement (the "Sublease").

The Mayor or his designated representatives and the Comptroller or her designated representatives, with the advice and concurrence of the City Counselor and after approval by the Board of Estimate and Apportionment, are hereby further authorized and directed to make any changes to the documents, agreements and instruments approved and authorized by this Ordinance as may be consistent with the intent of this Ordinance and necessary and appropriate

in order to carry out the matters herein authorized, with no further action of the Board of Aldermen necessary to authorize such changes made by the Mayor or his designated representatives or the Comptroller or her designated representatives.

SECTION SEVEN. The Mayor and the Comptroller are hereby authorized and directed to execute the Bonds and to deliver the Bonds to the Trustee for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Indenture. The Mayor and the Comptroller are hereby authorized and directed to execute the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the City. The City Register is hereby authorized to attest to and affix the seal of the City to the Bonds and the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

SECTION EIGHT. The City shall, and the officials, agents and employees of the City are hereby authorized to, take such further action, and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Bonds and the City Documents. The Mayor and the Comptroller are hereby authorized, through the term of the Equipment Lease, the Property Lease and the Sublease, to execute all documents or take any other actions on behalf of the City (including documents pertaining to the transfer of property) as may be required to carry out and comply with the intent of this Ordinance, the Indenture and the Equipment Lease, the Property Lease and the Sublease.

SECTION NINE. If any section, subsection, sentence, clause, phrase or portion of this ordinance is held to be invalid or unconstitutional, or unlawful for any reason, by any court of

competent jurisdiction, such portion shall be deemed and is hereby declared to be a separate, distinct and independent provision of this Ordinance, and such holding or holdings shall not affect the validity of the remaining portions of this Ordinance.

SECTION TEN. After adoption of this Ordinance by the Board of Aldermen, this Ordinance shall become effective on the 30th day after its approval by the Mayor or adoption over his veto.

EXHIBIT A

PLAN FOR INDUSTRIAL DEVELOPMENT

EXHIBIT B

FORM OF DEVELOPMENT AGREEMENT

EXHIBIT C

FORM OF INDENTURE

EXHIBIT D

FORM OF EQUIPMENT LEASE

EXHIBIT E

FORM OF BOND PURCHASE AGREEMENT

EXHIBIT F

FORM OF PERFORMANCE AGREEMENT